

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ADJUSTACAM LLC

v.

AMAZON.COM, INC.; ET AL.

NO. 6:10-cv-329-LED

JURY

**JOINT MOTION TO AMEND DOCKET CONTROL ORDER AND FOR EXTENSION
OF CERTAIN DEADLINES**

Plaintiff AdjustaCam LLC (“AdjustaCam”) and Defendants Sakar International, Inc. Kohl’s Corporation and Kohl’s Illinois, Inc. (collectively “Defendants”) jointly move the Court to amend the Docket Control Order entered on January 5, 2012 (Dkt. 588), as further amended on August 3, 2012 (Dkt. 660), as follows:

Pending before the Court is Plaintiff’s Motion to Dismiss all claims and counterclaims in this case. (Doc No. 719).

As noted in Plaintiff’s Motion to Dismiss, on August 30, 2012, at the culmination of reexamination proceedings involving the ‘343 patent-in-suit, the U.S.P.T.O. issued a Final Office Action rejecting the Asserted Claims as being unpatentable over prior art, but allowing additional new and amended claims. On September 20, 2012, in response to that Final Office Action, Plaintiff canceled the Asserted Claims of the ‘343 patent. On October 5, 2012, the U.S.P.T.O. issued a Notice of Intent to Issue Ex Parte Reexamination Certificate. Further, under the *Super-Sack* case, Plaintiff has provided Defendants with a covenant-not-to-sue under the ‘343 patent.

As noted in Defendants’ Response in opposition to Plaintiff’s Motion to Dismiss, (Doc No. 725), Defendants oppose the dismissal because the covenant-not-to-sue does not address new claims that will emerge from reexamination proceedings once a reexamination certificate issues.

Despite their disagreement on dismissal which is currently before the Court for resolution, the parties agree that the issues of infringement of the Asserted Claims, validity of the Asserted Claims, and any damages attributable to infringement of the Asserted Claims will be moot once the Reexamination Certificate inevitably issues.

Accordingly, the parties jointly request the Court to amend its Docket Control Order as follows:

ACTION	CURRENT DEADLINE	PROPOSED DEADLINE
Pretrial Disclosures due.	October 30, 2012	7 days after the Court rules on Plaintiff's Motion to Dismiss (if the Motion is denied)
Dispositive Motions (including <i>Daubert</i> motions) due.	November 2, 2012	7 days after the Court rules on Plaintiff's Motion to Dismiss (if the Motion is denied)
Response to Dispositive Motions (including <i>Daubert</i> motions) due.	November 16, 2012	14 days after the Court rules on Plaintiff's Motion to Dismiss (if the Motion is denied)
Pretrial Objections due.	December 7, 2012	14 days after the Court rules on Plaintiff's Motion to Dismiss (if the Motion is denied)
Motions in Limine due.	December 7, 2012	7 days after the Court rules on Plaintiff's Motion to Dismiss (if the Motion is denied)
Responses to Motions in Limine due.	December 10, 2012	14 days after the Court rules on Plaintiff's Motion to Dismiss (if the Motion is denied)

This extension of deadlines is not requested for purposes of delay, but rather, to avoid the parties having to expend unnecessary resources in litigating issues in a case that may soon be moot and/or dismissed.

October 29, 2012

/s/ Ezra Sutton

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this notice was served on all counsel who have consented to electronic service, Local Rule CV-5(a)(3)(A), on this day..

October 29, 2012

/s/ John J. Edmonds

John J. Edmonds

CERTIFICATE OF CONFERENCE

Counsel for the parties have conferred and complied with the meet and confer requirement of Local Rule CV-7(h). The parties are in agreement with the subject matter of the motion and are filing it as a joint motion.

October 29, 2012

/s/ John J. Edmonds

John J. Edmonds